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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

End User Common Line
Charges

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CC Docket No. 95-72

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

UNITED STATES TELEPHONE
ASSOCIATION

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SUMMARY

USTA urges the Commission to change its current rules imposing multiple SLCs on ISDN users and adopt the first option presented in the Notice in this proceeding: a "one SLC per ISDN facility" rule. The Commission's current multiple-SLC rule imposes disproportionate burdens of cost recovery on ISDN users. Because prospective users have a choice among various services, they will refuse to carry those burdens.

Because the multiple-SLC rule is not related to the NTS costs of ISDN users, the rule introduces pricing distortions that will prevent a "critical mass" of ISDN users from forming. This will thwart, rather than advance, the Commission's goals of advancing the National Information Infrastructure (NII) and rationalizing LEC cost recovery mechanisms.

The Notice appears to assume that a multiple-SLC rule or some "intermediate" alternative will increase SLC revenues, thus decreasing the usage-based Carrier Common Line (CCL) charges collected from interexchange carriers, which also recover interstate NTS costs. To the contrary, by inefficiently depressing demand for ISDN, a rule other than "one SLC per facility" could limit potential SLC revenues.

Of the options proposed in the Notice, a "one SLC per ISDN facility" rule will best satisfy these policy goals. The issue of imposing SLCs on ISDN offerings is narrow but important, especially for those users, such as individuals and small businesses, that are only now beginning to harness the power of the NII.

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I. INTRODUCTION

The United States Telephone Association ("USTA") respectfully submits these comments in the above-captioned rulemaking proceeding.^{1/} USTA is the major trade association of the local exchange carrier industry, with over 1,000 local telephone company members. The members of USTA seek to provide their customers with the services they need to participate fully in the National Information Infrastructure ("NII").

^{1/} See Notice of Proposed Rulemaking, CC Docket No. 95-72, FCC 95-212 (rel. May 30, 1995) (the "Notice").

Integrated Services Digital Network ("ISDN") offerings, the principal subject of this rulemaking, are an emerging means of providing digital bandwidth to residential and business users. ISDN allows users to communicate efficiently over multiple digital channels offered through (or "derived from") one physical facility.^{2/} In this proceeding, the Commission is revisiting its current requirement that users pay one Subscriber Line Charge ("SLC") for each derived channel in an ISDN offering -- in effect, paying multiple SLCs for each ISDN facility.^{3/}

Of the options discussed in the Notice, USTA supports the first one presented: the "one SLC per facility" rule.^{4/} That rule best satisfies the original intent of the Commission's access charge regime as well as today's needs to provide

^{2/} Types of ISDN offerings include Basic Rate Interface ("BRI"), with two voice-grade derived digital ("B") channels and one derived signalling ("D") channel, and Primary Rate Interface ("PRI"), with twenty-three B channels and one D channel.

^{3/} See NYNEX Telephone Companies Revisions to Tariff F.C.C. No. 1, Transmittal No. 116 (rel. Jan. 11, 1995). During the pendency of this rulemaking, the Commission has announced that it will not enforce the present "multiple-SLC" rule. Common Carrier Bureau Will Not Enforce Current Rules on Application of Subscriber Line Charges to ISDN Service, Public Notice, DA 95-1168 (rel. May 30, 1995).

^{4/} See Notice at para. 24. Although USTA's discussion in these comments focuses on the treatment of ISDN, such a rule should be considered for other derived-channel offerings as well.

consumers with advanced services at a reasonable price. The Commission should adopt that rule without delay.

II. THE MULTIPLE-SLC RULE FOR ISDN HARMS CONSUMERS' INTERESTS

Many parties have expressed concern regarding the Commission's imposition of multiple SLCs on ISDN offerings.^{5/} Multiple charges improperly impose greater burdens on ISDN users than other consumers of telecommunications service.

The Commission's current multiple-SLC policy will raise the price of taking ISDN service and cause consumers, especially individuals, families, and small businesses, to avoid using ISDN. If prices to consumers are artificially increased for ISDN because the Commission decides to impose multiple SLCs, only those most able to pay these federally-mandated charges would use this technology.

A. A Multiple-SLC Rule Limits the Availability of Advanced Services to All

^{5/} Among those groups protesting the decision are the United States Department of Commerce (Letter from Larry Irving, Assistant Secretary for Communications and Information, to Reed Hundt, Chairman, FCC, Mar. 17, 1995), and the Chamber of Commerce of the United States of America (Letter from Jeffrey H. Joseph, Vice President - Domestic Policy to Reed Hundt, Chairman, FCC, Apr. 5, 1995).

The multiple-SLC rule artificially inflates the prices for ISDN, widening the emerging division of potential ISDN users into the information-rich and the information-poor, contrary to the NII goals of the Administration.^{6/} Such a result would be undesirable because there is no strong basis for the multiple-SLC rule. Without such a basis, the current rule effectively discriminates against those who are unable to pay additional SLCs for ISDN.

B. A Multiple-SLC Rule Limits Efficient Communications Technology for Residential and Small Business Computer Users

As the Administration said in March 1995:

ISDN is an important low-cost, near-term technology for the Information Superhighway. Consumers, businesses, and educators are using this service for high-speed Internet access, telecommuting, video-conferencing, and PC based collaboration. A significant increase in the cost of ISDN could severely reduce demand just as the market for this service is poised to take off.^{7/}

A recent Commission staff study recognizes that relatively few customers now use ISDN.^{8/} Another recent study indicates that,

^{6/} See, e.g., The National Information infrastructure: Agenda for Action, 58 Fed. Reg. 49.025 (1993).

^{7/} Letter from Larry Irving, Assistant Secretary of Commerce for Communications and Information, to Reed Hundt, Chairman, FCC (Mar. 17, 1995) at 2.

^{8/} J.M. Kraushaar, Infrastructure of the Local Operating Companies Aggregated to the Holding Company Level, Industry Analysis Division, Common Carrier Bureau, FCC (rel. Apr. 24, (continued...))

compared to other industrialized countries, U.S. ISDN use is small and currently lagging that of Japan, France and other European Community nations.^{2/} The Commission staff reports that, although ISDN "can potentially provide for improved communication between computers, the lack of a critical mass of customers using ISDN has been a major stumbling block in the proliferation of end-to-end digital services."^{10/}

The imposition of multiple SLCs on each ISDN offering will further postpone the day that a "critical mass" of ISDN users will be reached. Ironically, in light of the multiple-SLC rule, the same Commission staff report noted that, in addition to some new sharing arrangements, "new marketing, pricing and regulatory approaches might facilitate further reduction in the cost of residential computer to computer ISDN service, leading to a critical mass of users that could drive down ISDN costs further."^{11/} The Commission's multiple-SLC rule has the opposite effect. By

^{2/} (...continued)

1995) at 5 (Local Infrastructure Report).

^{2/} Robert G. Harris and Luis A. Enriquez, ISDN in the United States: Strategies for Success, New Telecom Quarterly, First Quarter 1995, page 27.

^{10/} See Local Infrastructure Report, supra note 8, at 5.

^{11/} Id. at 5, n.2.

increasing costs to users, the Commission will depress further the demand for this relatively little-used service.

III. USERS SHOULD PAY ONE SLC FOR EACH ISDN FACILITY THEY TAKE

It is relatively rare for a Commission rule interpretation to stimulate the response from telecommunications customers, equipment providers, and the general media that occurred in the aftermath of the multiple-SLC ruling. It also is unusual for the Commission to place additional burdens on providers and users of new services, as the multiple-SLC rule has done to ISDN.

To address these and more general policy concerns, the Commission should replace the multiple-SLC rule for ISDN with the first option presented in the Notice -- a rule that would impose one SLC on each ISDN facility that a customer uses.^{12/} Although the Notice presents "intermediate" and other alternatives to the current rule, USTA believes that Commission adoption of a "one SLC per facility" rule will best serve the public interest.

In adopting a per-facility rule for ISDN, it is not necessary for the Commission to engage first in a complete overhaul of the

^{12/} One interface or physical facility to the customer is generally associated with one basic or primary rate ISDN offering. Therefore, a "one SLC per ISDN facility" rule is generally equivalent to imposing one SLC per ISDN offering.

access charge regime, although such reform is well-warranted.^{13/} Within the existing Commission rules, a targeted remedy can alleviate the ISDN problem at hand. The consumer interests in eliminating the unnecessary burdens on ISDN service are so compelling that the Commission should immediately focus on replacing the multiple-SLC rule, even as it contemplates fundamental change to the access reform process, which many argue is absolutely necessary.

A. The Original Goals of the Access Charge Proceeding,
As Updated, Support A "One SLC Per Facility" Rule

In initially focusing on ISDN, a change to a "one SLC per facility" rule will meet the needs of current and future users of ISDN for inexpensive and widely available digital bandwidth. It also is consistent with the currently codified goals that the

^{13/} Industry participants have proposed comprehensive access charge reform in the past. USTA filed a petition for rulemaking with the FCC in the matter of Reform of the Interstate Access Charge Rules, RM-8356 (filed Sept. 17, 1993), which USTA updated via an ex parte notice filed in CC Docket 94-1 on January 18, 1995. As the staff of the Common Carrier Bureau noted over two years ago, "Access charges are important to so many of the Commission's policies that it is critical to keep the access charge rules responsive to the current and future needs of the industry and customers." FCC Access Reform Task Force, Federal Perspectives on Access Charge Reform - A Staff Analysis (Apr. 30, 1993) at 1.

Commission pursued in establishing the access charge regime, including the SLC:

- Elimination of unreasonable discrimination and undue preferences among rates for interstate services;
- Efficient use of the local network;
- Prevention of uneconomic bypass; and
- Preservation of universal service.^{14/}

In particular, the Commission adopted a system of flat end user charges - SLCs - to recover NTS costs of the subscriber loop as one step toward achieving those goals.^{15/}

These goals of the original access charge proceeding are a reasonable framework for analyzing the application of SLCs to ISDN offerings, although they should be interpreted in light of today's complex and competitive telecommunications environment.

B. Elimination of Unreasonable Discrimination and Undue Preferences Among Rates for Interstate Services

^{14/} See MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983) at paras. 26-33, 88; Memorandum Opinion and Order, 97 FCC 2d 682 (1983) at para. 3; Memorandum Opinion and Order, 49 Fed. Reg. 7810 (Mar. 2, 1984) at para. 1.

^{15/} Id. at para. 176. With some modification, the Commission has maintained the basic access charge framework since 1983. However, in the 1983-1985 period, the Commission was heavily involved in modifying the implementation of SLCs because of widespread concern about monthly rate increases and the potential effects of SLCs on service to residential and small business users.

When adopting SLCs as a way to recover the NTS costs of local loops, the Commission was concerned that then-existing diverse ways of recovering those costs caused unreasonable discrimination. However, by imposing a uniform multiple-SLC rule for ISDN, the Commission does not advance its anti-discrimination policies.

A single SLC per ISDN facility would satisfy the anti-discrimination goal better than the existing rule or any "intermediate" approach. Since each ISDN offering generally is associated with one facility, ISDN subscribers, like most other users, will pay one SLC to recover the NTS costs of that facility.^{16/} Although the Notice expresses concern that a "one SLC per facility" rule results in "lower SLCs" for PRI users compared

^{16/} The Commission did establish different SLCs for residential and single-line business customers, on one hand, and multi-line business customers on the other. The original access charge orders essentially applied a "one SLC per facility" rule, with exceptions for Centrex-CO service and party line service. Centrex-CO was a state-tariffed, network-based LEC offering that provided an alternative to the use of PBXs by business customers, and entailed the use of multiple loops to a customer's location. In implementing SLCs for Centrex-CO, the Commission decided to provide then-current Centrex-CO customers more generous transitional treatment than other business customers in part because of concerns about "stranded investment" and universal service raised by state regulators. See MTS and WATS Market Structure, 49 Fed. Reg. 7810 (Mar. 2, 1984) at paras. 40-50. For party line service, the Commission imposed identical SLCs on single-party and multi-party customers. Thus, the Commission has issued a decision that is consistent with the proposed "one SLC per facility" rule.

to BRI users, that concern disregards the SLC's original, and nondiscriminatory, purpose to recover average facility costs.

Rather than imposing multiple SLCs per ISDN facility as a way to expand SLC revenues, or attempting to develop some intermediate number of SLCs to be paid by ISDN users, a "one SLC per facility" rule continues to satisfy the SLC's original -- and still vital -- nondiscriminatory purpose.

C. Efficient Use of the Network

In the original access charge proceeding, the Commission interpreted this goal to mean the promotion of economic efficiency "by eliminating the distortions that inevitably occur from the recovery of fixed charges through usage charges."^{17/} This emphasis on removing distortions caused by inefficient cost recovery principles remains valid, and serves consumer interests by helping them make efficient choices among telecommunications services.

In waiver proceedings before the Commission regarding the multiple-SLC rule, one party has stated that because ISDN is a switch feature, it does not change the characteristics of the local loop.^{18/} Because SLCs are designed to provide a mechanism for

^{17/} Id. at para. 6.

^{18/} Petition for Waiver of Part 69.104 as Applied to Derived Channel Services such as ISDN, Pacific Bell (filed Feb. 21, 1995)
(continued...)

recovering interstate subscriber loop costs, if loop costs are unaffected, there is no reason to treat the loop associated with an ISDN facility differently from others. This argues strongly for a "one SLC per facility" rule, which, quite pragmatically, would not require the Commission to make difficult judgment calls about particular ISDN service offerings. Such neutral regulatory treatment will permit ISDN to evolve over time to meet customer needs.

A multiple-SLC rule (that is, charging one SLC per derived channel) introduces pricing distortions that will prevent a "critical mass" of ISDN users from forming. This will thwart, rather than advance, the Commission's goal of rationalizing LEC cost recovery mechanisms. The Notice appears to assume that a multiple-SLC rule or some "intermediate" alternative will increase SLC revenues, thus decreasing the usage-based Carrier Common Line (CCL) charges collected from interexchange carriers, which also recover interstate NTS costs. To the contrary, by inefficiently depressing demand for ISDN, a rule other than "one SLC per facility" could limit potential SLC revenues.

Theoretically, the Commission could analyze the interstate NTS loop costs associated with ISDN, other derived-channel offerings,

^{18/} (...continued)
at 1.

and traditional local services, and attempt to derive SLCs for various classes of NTS costs associated with those services. That analysis presumably would consider the effect of such new charges on the CCL charge.

As a practical matter, such an analysis would be difficult to perform. In addressing the imposition of SLCs on Centrex-CO service in 1985, the Commission stated that

[T]he access rules are based on average loop costs for all categories of subscribers. There are an infinite number of subscribers who will be paying end user charges and who could also make the argument that they cause fewer costs to be assigned to the interstate jurisdiction than do other subscribers. There is simply no practical way for the Commission to break down average subscriber loop costs for Centrex service without doing the same for other categories of subscribers.^{12/}

The same constraints apply as forcefully today.

While the Notice expresses concern about whether a "one SLC per ISDN facility" rule will result in unnecessarily inflated CCL charges, USTA believes that the near-term impact will be minimal. ISDN subscribership is so low that any potential negative effects on the CCLC will be slight. When ISDN subscribership increases (if, among other things, not hampered by federal charges of more than a single SLC per ISDN facility), USTA anticipates that overall interexchange network usage will grow, permitting the CCL charge to decline. This is due in part to the greater bandwidth and multiple

^{12/} MTS and WATS Market Structure, 49 Fed. Reg. 7810 at para. 39.

channels that ISDN will make available to residential and business users over existing facilities, which will permit more extensive voice and data communication among users throughout the United States.

Because the effects of ISDN on increasing the CCL charge will be de minimis in the short term, USTA recommends that the Commission immediately address the pressing consumer issues surrounding ISDN by adopting a "one SLC per facility" rule. More general issues surrounding the future of the SLC and the CCL charge generally should be addressed in a broader Commission proceeding on access reform. This proceeding, and ISDN itself, should not serve as a vehicle for piecemeal restructuring of the access charge regime.^{20/}

Better than any other option in the Notice, a "one SLC per facility" rule will permit the communications efficiencies possible through the use of ISDN to be realized fully. The imposition of non-cost-based multiple SLCs on ISDN would, by stifling development of this service, unnecessarily limit the efficient telecommunications use by individuals and businesses, stifling such

^{20/} The Notice mentions the possibility of increasing the SLC to compensate for perceived shortfalls in the CCL charge. While USTA is not convinced that this step is necessary in the narrow case of ISDN, such a step, when taken as part of overall access reform, is a potential means of addressing the Commission's concerns on this issue.

innovative, pro-environmental developments as telecommuting and ultimately harming job creation.

D. Responsiveness to Competition:
Prevention of Uneconomic Bypass

In formulating this goal, the Commission originally sought to remove the incentive (due to distorted cost recovery) for large users to substitute "bypass" facilities that were more costly than the local distribution facilities of telephone companies.

The advent of competition for access and local exchange services has recast the "bypass" issue. While the Commission generally views competitive provision of access and local exchange services as desirable, it has recognized several times that LECs (and other incumbent carriers) should have pricing flexibility to meet that competition.^{21/} The multiple-SLC rule is antithetical to

^{21/} For example, the FCC has adopted a density zone pricing system under which the LECs' rates for high-capacity special access services (and other services subject to competition) could differ over time among areas subject to varying amounts of competition. Expanded Interconnection With Local Telephone Company Facilities, 7 FCC Rcd 7369, 7451-57 (1992) ("Special Access Expanded Interconnection Order"), recon. 8 FCC Rcd 127 (1992), second recon. FCC 93-378 (rel. Sept. 2, 1993), pets. for recon. pending, appeal pending sub nom. Bell Atlantic v. FCC, No. 92-1619 (D.C. Cir. filed Nov. 25, 1992). In creating these density zones, the FCC noted that then-current methods of study-area-wide rate averaging inappropriately caused LECs "to price above cost in the urban areas where competition is most intense." Special Access Interconnection Order at 7453. The FCC later adopted a similar density zone pricing system for transport
(continued...)

this policy and thus limits the benefits to consumers of competition. When multiple SLCs are assessed to ISDN users that are not related to their NTS costs, competitors will have an umbrella to cover uneconomical pricing. Among the options presented in the Notice, the "one SLC per ISDN facility" rule would best close this pricing umbrella.²²

E. Widespread Availability of the NII:
Preservation of Universal Service

In the NII initiative, the Administration^{23/} and the Commission have consistently sought to ensure that advanced telecommunications services are readily available to all Americans. ISDN is viewed as a reasonable way of obtaining the bandwidth needed for widespread residential and small business use of simultaneous voice, data and other communications on the NII, and ISDN is recognized as an important component of the multi-lane information highway.^{24/}

^{21/} (...continued)

services. Expanded Interconnection with Local Telephone Company Facilities, Transport Phase I, FCC 93-379 (rel. Sept. 2, 1993).

^{22/} The Commission has not proposed, in this or any other proceeding, to require LEC competitors to charge SLCs or otherwise participate in the access charge regime.

^{23/} National Information Infrastructure Advisory Council, Common Ground: Fundamental Principles for the National Information Infrastructure (Mar. 1995) ("Common Ground") at 7.

^{24/} United States Telephone Association, Route 2000:
(continued...)

The multiple-SLC rule cuts directly against this view. ISDN, which has been a reasonably priced digital service that expands capabilities over analog dialtone service, is now subject to increased federally mandated charges on the basis of a narrow interpretation of existing, outdated rules. The Commission should not adopt regulatory disincentives that stifle deployment of advanced infrastructure.^{25/}

The Commission's present application of SLCs to ISDN widens the "information have/have not" divide. Better than any other option presented in the Notice, a "one SLC per ISDN facility" rule would minimize that divide and help promote greater residential and consumer participation in the NII.

IV. CONCLUSION

The issue of imposing SLCs on ISDN offerings is narrow but important, especially for those users, such as individuals and small businesses, that are only now beginning to harness the power of the NII. Rather than promoting efficient recovery of NTS costs, the Commission's current multiple-SLC rule imposes disproportionate burdens of cost-recovery on ISDN users. Because prospective ISDN

^{24/} (...continued)

Information Superhighway Public Policy Road Map (Dec. 30, 1994) at 4.

^{25/} See Common Ground, supra note 23, at 8.

users have the choice of various services, they will refuse to carry those burdens.

As a result, the benefits of ISDN will not be realized as broadly as they would be under a rule based on more fundamental policies, such as those that guided the original access charge proceeding. Of the options proposed in the Notice, a "one SLC per ISDN facility" rule will satisfy these policy goals. In doing so, it will help meet the needs of current and, more importantly, prospective NII users and consumers.

Respectfully submitted,

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